

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Southaven, MS, Employer**

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**Docket No. 17-1653  
Issued: January 29, 2018**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 24, 2017 appellant filed a timely appeal of a June 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish total disability for the period December 24, 2016 to March 31, 2017 causally related to her accepted employment conditions.

**FACTUAL HISTORY**

On September 23, 2013 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1), alleging that, on August 30, 2013, she injured her left upper back and

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

experienced muscle spasms when pulling down mail from a shelf. OWCP accepted the claim for thoracic sprain and left shoulder sprain. It later expanded the claim to include aggravation of cervical degenerative disc disease at C5-6. Appellant stopped work on September 20, 2013 and returned to limited-duty work on September 24, 2013. OWCP paid appropriate compensation on the supplemental rolls beginning February 19, 2014. It developed this claim under OWCP File No. xxxxxx326.

Appellant was initially treated by Dr. Robert M. Pickering, a Board-certified orthopedist, from November 20 to December 17, 2013, for mid-back pain, burning, and left-sided rib pain. She reported that on August 30, 2013 while at work lifting overhead she felt a sharp pain in the upper back. Thoracic spine x-rays showed some mild disc space narrowing at two levels. Dr. Pickering diagnosed thoracic radiculopathy and returned appellant to work light duty. A November 10, 2014 functional capacity evaluation (FCE) revealed that she was capable of returning to light-to-medium range work. Appellant submitted a duty status report (Form CA-17) prepared by Dr. Patrick M. Curlee, a Board-certified orthopedist, on December 3, 2014, who diagnosed cervical strain and sprain. Dr. Curlee released her to a light-duty position for four hours a day.

On December 31, 2014 the employing establishment offered appellant a modified rural carrier/lobby assistant position for four hours a day subject to restrictions, effective December 3, 2014. On January 5, 2015 appellant accepted the position and returned to work. In an August 13, 2015 letter, OWCP indicated that she had been employed as a modified rural carrier for four hours per day, 20 hours per week effective December 13, 2014 with wages of \$625.14 a week. It advised that, effective December 13, 2014, her monetary compensation would be reduced based upon actual earnings.<sup>2</sup>

In a work release note dated February 11, 2016, Dr. Jovie Bridgewater, a Board-certified anesthesiologist, noted that appellant was treated for increased neck pain, shoulder pain, and spasm and could not return to work.

On February 23, 2016 appellant filed a claim for compensation (Form CA-7) for total disability due to a change or worsening of her accepted work-related conditions beginning February 11, 2016. OWCP developed the claim as a recurrence of disability (Form CA-2a), which it ultimately denied.<sup>3</sup>

In a work excuse form dated February 23, 2016, Dr. N. Craig Clark, a Board-certified neurosurgeon, indicated that appellant was off work from February 23 to April 4, 2016. He noted that she would be reevaluated after she completed physical therapy. In a return work slip dated April 22, 2016, Dr. Clark indicated that appellant was unable to return to work until she underwent an electromyogram (EMG) and had a follow-up visit.

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<sup>2</sup> This letter did not purport to be a formal loss of wage-earning capacity determination as no appeal rights were attached to the correspondence.

<sup>3</sup> In a July 11, 2016 decision, OWCP denied appellant's claim for a recurrence of disability commencing February 11, 2016 in OWCP File No. xxxxxx326.

In March 8 and April 4, 2016 reports, Dr. Curlee treated appellant for increased neck pain extending to her shoulders bilaterally, interscapular region, and intermittent tingling in the bilateral forearms, caused by work activities. He diagnosed cervical thoracic strain/sprain caused by an August 2013 work injury, moderate C5-6 degenerative disc disease, C5-6 broad based disc bulging, and persistent neck and shoulder myofascial pain. Dr. Curlee attributed appellant's increased symptoms to work activities. He returned her to work with restrictions on February 22, 2016, but she was unable to finish the day due to increased neck and arm pain caused by her work activities. Dr. Curlee kept her off work.

Appellant was treated by Dr. Clark on April 20, 2016, for neck and left shoulder pain, and diffuse numbness in the left arm, index, long, and ring fingers. She reported working as a rural mail carrier and in August 2013 while casing mail she reached to retrieve mail from the top shelf and felt a "pop" in her neck. Appellant's symptoms worsened and she sought medical treatment and had three months of physical therapy. A FCE revealed that she could work four hours a day. Dr. Clark noted that magnetic resonance imaging (MRI) scans performed in February 2014 and April 2016 as unremarkable. He diagnosed chronic cervical strain, left occipital neuralgia, left subacromial bursitis, and left carpal tunnel syndrome. Dr. Clark recommended an EMG, left shoulder steroid injection, left occipital nerve block, and left wrist splint. He noted that appellant was totally disabled.

On June 8, 2016 appellant, filed an occupational disease claim (Form CA-2), alleging that she developed neck and back pain as a result of repetitively lifting, pushing, and pulling packages in the performance of duty. She became aware of her condition and its relationship to her federal employment on February 8, 2016. Appellant noted that she was unsure if she should file a new claim or a recurrence of disability claim attributable to her earlier claim. OWCP developed this claim under File No. xxxxxx660.<sup>4</sup>

On August 11, 2016 OWCP accepted appellant's claim for aggravation of sprain of ligaments of the cervical spine in File No. xxxxxx660.

On August 23, 2016 OWCP requested Dr. Clark advise whether appellant had residual disability directly related to or caused by her work injury, when she would be able to return to gainful employment in any capacity, when she would reach maximum medical improvement, and what restrictions she had at this time.

On August 24, 2016 appellant filed claims for compensation (Forms CA-7), for leave without pay for total disability for the period February 8 to 19, 2016; February 23 to April 22, 2016; and May 2 to August 19, 2016. The employing establishment noted that there was no medical evidence received which supported disability. The employing establishment noted that appellant had a modified job assignment under OWCP File No. xxxxxx326.

In a development letter dated August 31, 2016, OWCP requested that appellant submit additional information to support her claim for compensation beginning February 8, 2016

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<sup>4</sup> OWCP administratively combined File Nos. xxxxxx326 and xxxxxx660, with the former serving as the master file.

including medical evidence establishing that her total disability was due to the accepted condition for the period claimed.

Appellant submitted a March 31, 2016 report from Dr. Curlee, who treated her for neck pain. Dr. Curlee noted that she had no relief after four physical therapy sessions and continued to have pain extending into her shoulders bilaterally, interscapular region, and intermittent tingling into the forearms. He diagnosed chronic cervical, thoracic strain/sprain caused by work-related injury of August 2013, moderate C5-6 degenerative disc disease, C5-6 broad-based disc bulging, and persistent neck and shoulder myofascial pain. Dr. Curlee returned appellant to work for four hours a day on April 25, 2016 with restrictions on lifting over 20 pounds.

Appellant was treated by Dr. Bridgewater on June 9, 2016 for worsening neck pain radiating into both shoulders, arms, fingers, and upper back. Dr. Bridgewater noted findings on examination of neck pain, neck stiffness, back pain, and bilateral shoulder pain. He diagnosed chronic pain, degeneration of lumbar and lumbosacral disc, degeneration of cervical disc, and chronic pain of both shoulders.

Appellant submitted a June 24, 2016 report from Dr. Clark who noted that an EMG was normal and MRI scans showed no evidence of significant neurocompression. Her major complaint continued to be cervical and thoracic axial pain. Dr. Clark diagnosed chronic cervical strain and left subacromial bursitis. He recommended a repeat FCE.

In a decision dated October 27, 2016, OWCP denied appellant's claim for compensation for total disability for the period of February 8 to 19, 2016; February 23 to April 22, 2016; May 2 to August 19, 2016; and June 7 to September 2, 2016. It advised that the evidence of record failed to establish work-related disability during the periods claimed.<sup>5</sup>

Appellant was treated in the emergency room by Dr. Roderick A. Hart, a Board-certified family practitioner, on October 8, 2016, for neck pain which she reported was chronic from a work-related injury in February 2016. She noted that her pain became worse after physical therapy. Dr. Hart noted findings of neck muscular tenderness and decreased range of motion secondary to pain. He diagnosed cervicgia, chronic pain, myalgia, and pain in the thoracic spine.

Appellant submitted a work capacity evaluation (Form OWCP-5c) from Dr. Clark dated October 26, 2016 who diagnosed sprain of the ligaments of the cervical spine. He noted that she was able to perform her preinjury job without restrictions. Dr. Clark indicated that appellant could work sedentary, light duty, and medium-duty work. He did not note any restrictions on driving.

Appellant was treated by Dr. Bridgewater on November 1, 2016 for pain and burning in the upper back, middle back, and shoulders. He diagnosed chronic pain, degeneration

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<sup>5</sup> On October 27, 2016 appellant requested an oral hearing before an OWCP hearing representative. A hearing was held on June 15, 2017. At the time the present appeal was filed, OWCP's hearing representative had not issued a decision with respect to OWCP's October 27, 2016 decision. Consequently, periods addressed in OWCP's October 27, 2016 decision are not before the Board on the present appeal. *See* 20 C.F.R. § 501.2(c).

lumbar/lumbosacral disc, degeneration of cervical disc, and chronic pain in both shoulders. Appellant indicated that her pain medication was controlling her pain and allowing her to function daily, but she was unable to drive due to the sedative effects of the medication. She requested a letter be written to her employing establishment stating that she was unable to drive to work due to the side effects of her medication.

Appellant submitted a statement dated November 4, 2016 and indicated that she was intimidated during her FCE and was in considerable pain. She requested that she be referred to another facility for a FCE.<sup>6</sup>

A November 21, 2016 field nurse report noted that Dr. Clark earlier released appellant to her regular job, but that appellant had not returned to work based on Dr. Bridgewater's recommendation. She noted appellant's concern about her prescribed medication and driving. The nurse noted a similar assessment on December 21, 2016.

On March 31, 2017 appellant filed a claim for compensation (Form CA-7), for total disability for the period December 24, 2016 to March 31, 2017.

In an April 14, 2017 letter, OWCP requested that appellant submit additional information to support her claim for compensation beginning December 24, 2016 to March 31, 2017 including medical evidence establishing that her total disability was due to the accepted condition for the period claimed.

By decision dated June 15, 2017, OWCP denied appellant's claim for compensation for total disability for the period December 24, 2016 to March 31, 2017. It advised that the evidence of record failed to establish work-related disability during the claimed period due to the accepted conditions.

### **LEGAL PRECEDENT**

Section 8102(a) of FECA<sup>7</sup> sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general, the term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."<sup>8</sup> This meaning, for brevity, is expressed as disability for work.<sup>9</sup>

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<sup>6</sup> Appellant filed claims for compensation (Form CA-7), for leave without pay for total disability for the period August 22 to October 28, 2016; October 31 to November 11, 2016; November 28 to December 9, 2016; and December 12 to 23, 2016. In letters dated January 3 and 11, 2017, OWCP requested that she submit additional information to support her claims for compensation beginning November 28, 2016.

<sup>7</sup> 5 U.S.C. § 8102(a).

<sup>8</sup> 20 C.F.R. § 10.5(f). *See also William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

<sup>9</sup> *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

For each period of disability claimed, the employee has the burden of proving that she was disabled from work as a result of the accepted employment injury.<sup>10</sup> Whether a particular injury caused an employee to be disabled from employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable, probative, and substantial medical evidence.<sup>11</sup>

### ANALYSIS

OWCP accepted appellant's claim for thoracic strain and sprain of the left shoulder, aggravation of cervical degenerative disc disease at C5-6, and aggravation of sprain of ligaments of cervical spine. On March 31, 2017 appellant filed a claim for compensation, for leave without pay for total disability for the period December 24, 2016 to March 31, 2017.<sup>12</sup> The Board finds that the medical evidence of record is insufficient to establish total disability for the period December 24, 2016 to March 31, 2017 causally related to her accepted employment conditions.

The Board notes that appellant did not return to her regular work after OWCP received an October 26, 2016 work capacity evaluation (Form OWCP-5c) from Dr. Clark advising that appellant was able to perform her usual preinjury job without restrictions. Appellant continued to file claims for total disability compensation and provided a November 1, 2016 report from Dr. Bridgewater who diagnosed chronic pain, degeneration lumbar/lumbosacral disc, degeneration of cervical disc, and chronic pain in both shoulders. She indicated that her pain medication was controlling her pain and allowing her to function daily, but she was unable to drive due to the sedative effects of the medication. Even though Dr. Bridgewater noted that appellant was totally disabled from work, he did not specifically explain how any accepted condition would cause disability beginning December 24, 2016 to March 31, 2017.<sup>13</sup> Additionally, he attributed her disability at least partially to a lumbar and bilateral shoulder condition. However, OWCP has not accepted that appellant developed a lumbar condition or a bilateral shoulder condition as a result of her work duties.<sup>14</sup> Dr. Bridgewater also has not discussed how any prescribed medication for an accepted condition interfered with her ability to drive.<sup>15</sup> The Board notes that Dr. Clark did not list any restrictions on driving.

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<sup>10</sup> See *William A. Archer*, 55 ECAB 674 (2004).

<sup>11</sup> See *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>12</sup> Appellant continued to receive wage-loss compensation for partial disability under OWCP File No. xxxxxx326 until the filing of the present appeal.

<sup>13</sup> See *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>14</sup> For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>15</sup> See *B.W.*, Docket No. 14-0372 (issued November 12, 2014) (physician did not address the medical condition for which narcotic medication was prescribed and did not state any opinion that residuals of the accepted conditions disabled appellant). The Board notes that there is also no indication in the record that other appropriate modes of transportation were not available for commuting to work.

Other medical reports of record predate the claimed period of disability and do not otherwise address how total disability beginning December 24, 2016 was due to the accepted conditions. As noted, for each period of disability claimed, the employee has the burden of proving that appellant was disabled for work as a result of the accepted employment injury.<sup>16</sup>

On April 14, 2017 OWCP requested that appellant submit medical evidence to support her claim for compensation beginning December 24, 2016 to March 31, 2017. Appellant did not submit responsive medical evidence addressing this particular period.

On appeal appellant asserts that she submitted sufficient medical evidence supporting disability for the period claimed. The Board finds that she failed to submit rationalized medical evidence establishing causal relationship between the specific period of claimed disability and the accepted conditions.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has failed to establish total disability for the period beginning December 24, 2016 and March 31, 2017 causally related to the accepted employment conditions.

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<sup>16</sup> *Supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2018  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board